



**EXECUTIVE OFFICE OF THE PRESIDENT**  
**OFFICE OF MANAGEMENT AND BUDGET**  
WASHINGTON, D.C. 20503

**URGENT**

April 4, 1989

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer -

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SUBJECT: State draft report on a munitions control provision (Sec. 226(a)) in the HFAC March 17th Foreign Aid discussion draft.

NOTE: On March 31, 1989, we circulated a Commerce draft report on a similiar provision in S. 347, Antiterrorism and Arms Export Amendments of 1989. Differences between these two reports will be addressed after all comments are received.

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

A response to this request for your views is needed no later than WEDNESDAY, APRIL 5, 1989.

Questions should be referred to **ANNETTE ROONEY/SUE THAU** (395-7300), the legislative analyst in this office.

*Ronald K. Peterson*

RONALD K. PETERSON FOR  
Assistant Director for  
Legislative Reference

Enclosure

cc: J. Eisenhower  
A. Raul/T. Thiele  
C. Beebe  
L. Kaplan  
J. Nix

**URGENT**

**United States Department of State****Washington, D.C. 20520**

Dear Mr. Chairman:

I am writing to express the Department's support for a particular provision in the proposed Defense Trade and Export Control Act of 1989, introduced by the House Foreign Affairs Committee. The provision to which I refer concerns the Department's arms export control function. It confirms that decisions regarding which defense articles and defense services are covered by the U.S. Munitions List are to be made by the department that has been delegated this responsibility by the President. The legislation adds an important contribution to export controls by clarifying and codifying existing Executive Branch interpretation and practice.

We favor the provision because it clarifies for the benefit of the courts and the export community that the Department of State, the department to which the President has delegated this authority, makes the final decision as to which articles are covered by the U.S. Munitions List. There has been some uncertainty in the courts regarding the extent to which it is possible to review the Department's decision to designate categories of items as defense articles, as well as to determine in which category a particular item belongs. This provision will be helpful in this regard.

In addition, there appears to be some confusion being generated in the export community regarding which agency makes the decision in close cases. To resolve such questions in an expeditious manner, the Department has established a commodity jurisdiction procedure to be used when doubt exists within the United States Government (generally triggered by exporters' inquiries) as to whether a particular item is covered by the U.S. Munitions List, and therefore is within the licensing jurisdiction of the Department.

The Honorable  
Dante B. Fascell,  
Committee on Foreign Affairs,  
House of Representatives.

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DOS LEGIS AFFAIR

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Typically, the Department consults extensively with both Commerce and Defense before making the final decision. As stated in the International Traffic in Arms Regulations, decisions are based primarily on "whether an article is deemed to be inherently military in character," i.e., on its intrinsic qualities and capabilities. Although it is important whether the item has a predominantly military application, its proposed end use is not determinative. The commodity jurisdiction procedure has been in use for at least twenty years, and was expressly codified in the ITAR in 1984, after consultations with Commerce and Defense.

In sum, the legislation states clearly the current Executive Branch view and practice, which has evolved over the years pursuant to statutory authorities, and implementing regulations and executive orders. The Office of Management and Budget advises that there is no objection from the standpoint of the Administration's program to the submission of this letter.

Sincerely,

Janet G. Mullins  
Assistant Secretary  
Legislative Affairs